

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

WEALTH TAX REFERENCE No 2 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH
and
Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : YES
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF WEALTH TAX

Versus

PADMABEN PANNALAL

Appearance:

1. WEALTH TAX REFERENCE No. 2 of 1987
MR BB NAIK WITH MR MANISH R BHATT for Petitioner No. 1
NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE D.A.MEHTA

Date of decision: 25/09/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

In this reference at the instance of the revenue,

the following questions have been referred for the opinion of this Court in respect of assessment years 1975-76 to 1978-79 :-

"(1) Whether in the facts and circumstances of the case the Tribunal was right in law in holding that in the valuation of assessee's properties viz. Girdhar Nivas and Sanghvi Estate, the provisions of Rule 1BB of the W.T. Rules, 1957 for the asstt. years 1975-76 to 1978-79 were applicable ?

(2) Whether in the facts and circumstances of the case the provisions of Rule 1BB were applicable to the valuation of both the above mentioned properties of the assessee ?"

2. We have heard Mr BB Naik learned counsel for the revenue. Though served, none appears for the respondent-assessee.

3. The learned counsel for the revenue submits that question No. 1 had been referred for the opinion of this Court in view of the controversy which was then prevailing whether Rule 1BB providing for method of valuation of a house, which was inserted with effect from 1.4.1979, would apply to the valuation of a house for the assessment years prior to 1.4.1979. The learned counsel fairly states that the said controversy is now concluded by the decision of the Apex Court in CIT vs. Sharvan Kumar Swarup & Sons, 210 ITR 886 wherein the Supreme Court has held that Rule 1BB is merely a Rule of evidence and, therefore, procedural in nature and is applicable to all proceedings pending on 1.4.1979 when the Rule came into force. Hence, the rule was applicable to all cases pending on that date.

Accordingly, our answer to question No. 1 is in the affirmative i.e. in favour of the assessee and against the revenue.

4. Coming to question No. 2, the learned counsel reiterates the submission made on behalf of the department before the Tribunal that Rule 1BB can be applied only in respect of one house. It is submitted that in the instant case, there are two houses and, therefore, Rule 1BB cannot be applied for valuation of both the houses. In this connection, the learned counsel has urged that Rule 1BB uses the expression "a house"

and, therefore, the letter "a" signifies only one.

5. Section 7(1) of the Wealth-tax Act, 1957 provided at the relevant time as under :-

"7(1) Subject to any rules made in this behalf, the value of any asset, other than cash, for the purposes of this Act, shall be estimated to be the price which in the opinion of the Wealth-tax Officer it would fetch if sold in the open market on the valuation."

(emphasis supplied)

Sub-section (4) of Section 7 read as under at the relevant time :-

"7(4). Notwithstanding anything contained in sub-section (1), the value of a house belonging to the assessee and exclusively used by him for residential purposes throughout the period of twelve months immediately preceding the valuation date may, at the option of the assessee, be taken to be the price which, in the opinion of the Wealth-tax Officer, it would fetch if sold in the open market on the valuation date next following the date on which he became the owner of the house, or on the valuation date relevant to the assessment year commencing or the 1st day of April, 1971, whichever valuation date is later :

Provided that where more than one house belonging to the assessee is exclusively used by him for residential purposes, the provisions of this sub-section shall apply only in respect of one of such houses which the assessee may, at his option, specify in this behalf in the return of net wealth.

Explanation :

Rule 1BB of the Wealth-tax Rules, 1957 read as under :-

"1BB. (1) For the purposes of sub-section (1) of Section 7, the value of a house which is wholly or mainly used for residential purposes shall be the aggregate of the following amounts, namely :-

(a) the amount arrived at by multiplying the net maintainable rent in respect of the part of the house used for residential purposes by the fraction 100/8; and

(b) the amount arrived at by multiplying the next maintainable rent in respect of the remaining part of the house, if any, by the fraction 100/9 :

Provided that in relation to a house which is built on leasehold land, this sub-rule shall have effect as if for the fraction 100/8 in clause (a) or, as the case may be, the fraction 100/9 in clause (b), the fractions 100/9 and 100/10, respectively had been substituted.

Explanation
(emphasis supplied)

6. The aforesaid provisions make it clear that the Rule 1BB for valuation of a house would be applicable to any number of houses, but the benefit given to the assessee to restrict the value of the house (to the market price on the valuation date next following the date on which the assessee became owner of the house or on the valuation date relevant to the assessment year commencing on 1.4.1971, whichever valuation date is later) is available to the assessee only in respect of one house belonging to the assessee and that such benefit is not available to the assessee in respect of more than one house. The absence of any such phraseology in Rule 1BB and the clear intention of the legislature to apply the valuation rules particularly Rule 1BB, to any asset as provided in sub-section (1) of Section 7 makes it clear that the expression "a house" in sub-rule (1) of Rule 1BB is applicable to any number of houses and not just to one house.

7. The provisions of Section 13(2) of the General Clauses Act supports the aforesaid construction being placed by us. The relevant portion of Section 13 reads as under :-

"13. Gender and number.- In all Central Acts and Regulations, unless there is anything repugnant in the subject or context, -

(1)

(2) words in the singular shall include the plural, and vice versa."

We do not find anything in the context of the Rules or the provisions of Section 7 which could dissuade us from holding that the words "a house" in Rule 1BB includes the plural.

8. In view of the above discussion, our answer to question No. 2 is also in the affirmative i.e. in favour of the assessee and against the revenue.

9. The reference accordingly stands disposed of with no order as to costs.

(M.S. Shah, J.)

(D.A. Mehta, J.)

sundar/-